

APPEAL NO. 041030
FILED JUNE 18, 2004

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 et seq. (1989 Act). A contested case hearing (CCH) was held on March 22, 2004, with the record closing on May 6, 2004. The hearing officer resolved the disputed issue by deciding that the claimant reached maximum medical improvement, with a zero percent whole body impairment rating, on April 14, 2004, and that the claimant sustained disability from May 14, 2003, through February 10, 2004. On April 13, 2004, the hearing officer issued a Texas Workers' Compensation Commission (Commission) Order For Attorney's Fees (the attorney's fees order) to be paid pursuant to Section 408.222 and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 152.1 (Rule 152.1), in which the hearing officer approved \$1,281.75 of the \$1,406.25 in attorney's fees and approved \$63.00 of the \$108.20 of the expenses requested by the appellant (attorney) who represented the carrier. The attorney appealed the attorney's fees order. No response was received from the claimant or the carrier.

DECISION

Reversed and rendered.

Section 408.222 pertains to attorney's fees paid to defense counsel. Rule 152.4 sets forth the guidelines for legal services provided to claimants and carriers, and Rule 152.5 sets forth allowable expenses. We review a hearing officer's determination of attorney's fees under an abuse-of-discretion standard. Texas Workers' Compensation Commission Appeal No. 022605, decided November 27, 2002. Rule 152.4(b) provides that an attorney may request, and the Commission may approve, a number of hours greater than those allowed by the guidelines, if the attorney demonstrates to the satisfaction of the Commission that the higher fee was justified under Sections 408.221 and 408.222 and applicable Commission rules.

The request for attorney's fees covered the period of March 19 through March 22, 2004, and included communications, preparing for the CCH, and attending the CCH. The hours and expenses that the hearing officer did not approve are addressed below.

Formal Resolution: CCH. The attorney requested 5.5 hours for preparing for and attending the CCH and 2.5 hours for preparation for the CCH by a legal assistant. The hearing officer approved 5.5 hours for the attorney but denied the time for the legal assistant citing as the reason that the request exceeded the guidelines. The attorney provided the hearing officer with a justification text. According to the Attorney Fee Processing System Review Log Text, the hearing officer did not provide any additional explanation for denial of the request of preparation for the CCH by the legal assistant. We have recognized that where a hearing officer does not consider the justification text presented and merely indicates "exceeds guidelines," he or she does not have a sound basis to disapprove the requested fees. Texas Workers' Compensation Commission

Appeal No. 960158, decided March 5, 1996. In this instance, it does not appear that the hearing officer considered the justification text and she gave no reasoned explanation for disallowing the disputed items. As such, her denial of the requested fees was an abuse of discretion. We conclude that the hearing officer abused her discretion in not approving the additional hours of preparation time for the CCH and we approve an additional 2.5 hours of preparation time for the CCH by the legal assistant.

Travel Time. The hearing officer approved some, but not all of the attorney's travel time to attend the CCH. We conclude that it was an abuse of discretion to not approve the requested travel time. We approve an additional 0.50 hours for travel time. See Texas Workers' Compensation Commission Appeal No. 000933, decided June 1, 2000, and Rule 152.4(c)(8).

Travel Expense. The attorney requested \$79.45 in travel expenses for attending the CCH. The hearing officer approved \$63.00 in travel expenses, noting that the amount not approved exceeded the guidelines. Our review indicates that the requested travel expenses did not exceed the guidelines. See Rule 152.5(b)(1). We approve an additional \$16.45 in travel expenses.

Cost of Records. Rule 152.5(a) provides that as part of the application for attorney's fees, an attorney shall submit an itemized list of expenses incurred for the preparation and presentation of the client's case, and that the date, nature, and amount of the expense shall be clearly identified. Our review indicates that the attorney did not submit with the application for attorney's fees an itemized list of expenses with regard to the \$28.75 requested for the cost of records. Consequently, we do not find that the hearing officer abused her discretion in not approving the amount requested for the cost of records.

In summary, we approve an additional 2.5 hours for legal assistant services at the requested rate of \$50.00 an hour resulting in an additional \$125.00 and we approve an additional 0.50 for attorney's travel time at the rate of \$125.00 an hour resulting in \$62.50 for a total of an additional \$187.50 in approved time and we approve an additional \$16.45 in travel expenses. This results in an increase of \$203.95 in the total fee approved by the hearing officer. Accordingly, we reverse the hearing officer's order approving a total fee of \$1,281.75 and we render a decision approving the payment of a total fee in the amount of \$1,485.70.

The true corporate name of the insurance carrier is **PACIFIC EMPLOYERS INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**ROBIN MOUNTAIN
6600 CAMPUS CIRCLE DRIVE EAST, SUITE 200
IRVING, TEXAS 75063.**

Margaret L. Turner
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Gary L. Kilgore
Appeals Judge